**CIVIL WRIT JURISDICTION CASE No.1016 OF 1991**

In the matter of an application under Articles 226 and 227 of the Constitution of India.

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Masudan Mandal, son of Gholtu Mandal, resident of Village-Dharwa, Police Station 0f Bhawanipur, District – Purnia

……. Petitioner

Versus

1. The State of Bihar
2. The Additional Collector, Purnia.
3. Shri B. P. Sharma, Deputy Collector, Purnia,
4. Parmanand Singh, son of late Ram Narain Singh.
5. Muni Lal Singh, son of late Ram Narain Singh.
6. Maheshwar Singh, son of late Ram Narain Singh.
7. Navin Kumar Singh, son of late Kant Lal Singh.

All residents of Village – Madrauni, Police Station – Gopalpur, District – Bhagalpur.

…… Respondents

For the petitioner : M/S. Arun Prasad Ambashtha and Ravindra Kumar Chaudhary.

For the respondents : None.

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P R E S E N T

**THE HON`BLE MR. JUSTICE AJAY KUMAR TRIPATHI**

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A K Tripathi, J. Annexure-3 dated 20.11.1990 is an order in appeal which has been passed by the Additional Collector, Purnea from an order which has been passed under section 48E(10) of the Bihar Tenancy Act.

2. Submission of the learned counsel for the petitioner is that no appeal lies against the order passed under section 48E (10) of the Act. In support of such a submission Division Bench decision rendered in the case of Rasik Lal Singh v. State of Bihar, 1979 BBCJ 10 has been brought to my notice. A division Bench had to record in para-4 of the judgment as follows:

"Annexure-2 is an order in appeal. In our opinion, the

appeal is not maintainable against the order passed by the Collector under section 48E (10) of the Act. An appeal lies only from an order passed under sub-section (8) of section 48E of the Act. We quash annexure-2 on the ground that the appeal itself is not maintainable under the provisions of this Act."

3. The fact of this case is that on an application made under section 48E Bataidari Board was constituted but in absence of the Board rendering any opinion within six months the proceeding was withdrawn by the Collector under the Act and based on the evidence led by the parties an order in favour of the petitioner was passed as would be evident from perusal of annexure-2. Aggrieved by this order the private respondents filed an appeal and the order impugned has come to be passed which is annexure-3 to the present writ application.

4. The decision on law stated in Rasik Lal's case being what it is, the order contained in annexure-3 is hereby quashed. The writ application is allowed.

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**(Ajay Kumar Tripathi, J)**

Patna High Court:
The 12th December, 2008.
(NAFR) R K Pathak.